IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12103 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AHIR MAFABHAI RAMBHAI

Versus

DISTRICT MAGISTRATE

Appearance:

MR GONDALIA FOR YOGESH S LAKHANI for Petitioner

MR RC KODEKAR, Ld. AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 08/05/2001

ORAL JUDGEMENT

1. Heard learned advocate Mr.Gondalia for Mr.Y. S. Lakhani on behalf of the petitioner. Ld. AGP Mr.R. C. Kodekar on behalf of the respondent - State.

2. In the present petition under Article 226 of the Constitution of India, the order of detention dated 25th October, 2000 passed by the District Magistrate, at Bhavnagar has been challenged by the petitioner. The affidavit-in-reply has been filed by the respondent State.

3. Learned advocate Mr.Gondalia has raised several contentions to challenge the detention order, but he submits that the grounds, as mentioned in Para 4(I) of the petition, are insufficient to achieve subjective satisfaction by the detaining authority. According to his submission there is a delay in verification of statements of confidential witnesses. The four statements of confidential witnesses came to be recorded on 16th August, 2000. Thereafter all these statements were verified by respondent no.1 District Magistrate on 23rd October, 2000. Therefore, there is delay of about two months in verification also. Learned advocate Mr.Gondalia, on behalf of the petitioner, has submitted that the subjective satisfaction of authority about taking immediate action is not genuine and according to him the statements are vague, stereotype and general in nature. Such statements cannot be based to pass an order of detention against the present petitioner. Mr.Gondalia, learned advocate on behalf of the petitioner has relied upon the decision of this Court in Special Civil Application No.12966 of 2000 decided on 15th February, 2001 (Coram : S.K. Keshote, J.) which is a decision in respect to the brother of the present petitioner. The name of the petitioner is Ahir Mafabhai Rambhai and the case which has been cited is in respect to Ahir Sardulbhai Rambhai. Mr.Gondalia, learned advocate for the petitioner has submitted that in the present case there is same contention which has been raised in the above cited case and this Court has quashed and set aside the detention order in the above cited case, considering the fact that there is a delay in verification of the statements of confidential witnesses.

4. Learned AGP Mr.R. C. Kodekar on behalf of the respondent - State has submitted that there is a reply filed by the respondent - State. In para-(9) of the reply, para-4(I) of the petition has been replied by the respondent State, but he fairly agrees that there is no explanation given by detaining authority about the delay in verification of statements of confidential witnesses.

5. In light of these undisputed facts on record and considering the decision of this Court in respect to the brother of the present petitioner in identical case and

contentions raised in the above referred case, wherein on the ground of delay the detention order has been quashed and set aside by this Court and further considering the decision in Special Civil Application No.12966 of 2000 decided on 15th February, 2001 and considering the facts of the present case, it is difficult to accept that the detaining authority has applied his mind in the matter. It is clear case where the petitioner has been possibly booked for other extraneous consideration and reason.

6. For the reasons recorded in the oral judgment, the petition succeeds and the same is allowed. The order of detention dated 25th October, 2000 is vitiated and resulted to quash and set aside. The detenu - Ahir Mafabhai Rambhai who has been detained at present in District Jail, Nadiad be set at liberty forthwith if he is not required in any other case. Rule is made absolute accordingly. No order as to costs. Direct service is permitted.

(H. K. Rathod, J.)

(vrpanchal)*